

REMARKS

Applicants have amended claims 1, 3, 6, 39, 41, 44-46, 62, 64, and 76 and cancelled claims 2, 4, 5, 7, 8, 11, 14, 15, 17, 40, 42, 43, 49, 51, 53, 55, 63, 66, 67, 70, 73, 74, 75, 77, and 84-110 without prejudice or disclaimer.

Claims 1, 3, 6, 9, 10, 12, 13, 16, 18-39, 41, 44-48, 50, 52, 54, 56-62, 64, 65, 68, 69, 71, 72, 76, and 78-83 are pending in this application, with claims 1, 24, 39, and 62 being independent claims. Of those pending claims, claims 24-38 have been withdrawn from consideration as being allegedly drawn to a non-elected invention.

In the Office Action, claims 1-23 and 39-110 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Japanese patent document No. 2002-136332 (“Yuzuhara”) in view of U.S. Patent No. 1,686,936 to Simpson (“Simpson”). Applicants respectfully traverse this rejection.

Independent claims 1, 39, and 62 are the only pending independent claims that were rejected. As explained in more detail below, each of these claims is allowable over the references cited in the claim rejection.

Independent Claim 1

Applicants respectfully submit that the Section 103(a) rejection of independent claim 1 should be withdrawn because neither Yuzuhara nor Simpson discloses or suggests a combination of all of the features recited in claim 1. For example, claim 1 recites an applicator nozzle including, among other features, “at least one intermediate tooth . . . defining a channel . . . opening laterally on an exterior of the intermediate tooth via at least one outlet aperture facing substantially in a direction of at least one adjacent tooth.”

The Office Action cites Simpson for the asserted disclosure of “teeth defining a channel (17, fig. 2) . . . opening on an exterior of the at least one tooth via at least one outlet aperture (19),” and alleges that “[i]t [purportedly] would have been obvious . . . to construct the tooth with the outlet aperture opens [sic] to the free extremity of the tooth and the groove configuration as taught by Simpson into the hollow tooth of Yuzuhara” Office Action at 3. To the contrary, Applicants respectfully submit that even if certain elements of the references could be combined as proposed in the Office Action (a notion that Applicants contest), the combination of features recited in claim 1 would not result.

Rather than having a tooth defining a channel “opening laterally on an exterior” of the tooth, as recited in claim 1, Simpson discloses teeth 18 with openings 17 having an exit end facing in the direction of the lengthwise axis of each of the respective teeth. For example, Simpson at Figs. 3 and 4 shows the opening 17 having an exit hole that faces toward the free end of a tooth 18 and in the same direction as the longitudinal axis of the tooth 18. Even hypothetically if it would have been possible to modify Yuzuhara to incorporate the teeth 18 of Simpson, such a hypothetical modification would have lacked “at least one intermediate tooth . . . defining a channel . . . opening laterally on an exterior of the intermediate tooth via at least one outlet aperture facing substantially in a direction of at least one adjacent tooth.” Consequently, regardless of whether Yuzuhara and Simpson were to be considered individually or in combination, there is no *prima facie* case of obviousness. Thus, the Section 103(a) rejection of claim 1 should be withdrawn.

Applicants also respectfully submit that the claim rejection should be withdrawn because nothing supports the assertions in the Office Action attempting to provide an apparent rationale for combining the references. The Office Action alleges that “[i]t [purportedly] would have been obvious . . . to construct the tooth with the outlet aperture . . . as taught by Simpson into the hollow tooth of Yuzuhara in order to provide maximum strength and ability to penetrate hair of the user.” Office Action at 3. Neither one of the references, however, appears to refer to such a hypothetical modification providing “maximum strength” or “ability to penetrate hair of the user.” Further, the Office Action does not provide any explanation or evidence to show how the proposed combination would purportedly have “maximum strength” or “ability to penetrate hair of the user.” Thus, the claim rejection appears to be based on an improper hindsight reconstruction of the references using Applicants’ claims and disclosure as a template. For this additional reason, Applicants respectfully submit that the Section 103(a) rejection of claim 1 should be withdrawn for lacking any *prima facie* case of obviousness.

Independent Claims 39 and 62

Applicants respectfully submit that the Section 103(a) rejection of independent claims 39 and 62 should be withdrawn because neither Yuzuhara nor Simpson discloses or suggests a combination of all of the features recited in claims 39 and 62. For example, each of independent claims 39 and 62, as amended, recites an applicator nozzle, including, among other features, “teeth disposed in at least one row comprising . . . at least two intermediate teeth adjacent to one another in the row, . . . wherein each of the at least two intermediate teeth of the row defines an aperture facing in the same

direction.” In contrast to such an arrangement in which respective apertures of adjacent intermediate teeth face in the “same direction,” Yuzuhara appears to require ports 116 of adjacent brush teeth 102b and 102c to have a different direction of opening. See, e.g., Yuzuhara’s English language abstract in the last two lines, describing ports 116 having opening directions that differ, and Yuzuhara at Figs. 4-8 showing differing opening directions for ports 116. Hence, Yuzuhara teaches away from the applicator nozzle recited in independent claims 39 and 62. Thus, even if it were to be possible to modify the brush of Yuzuhara to include certain features of Simpson as proposed in the Office Action (a notion that Applicants dispute), the applicator nozzle of claims 39 and 62 would not result.

The M.P.E.P. advises “[i]f a proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” § 2143.01(VI) (8th ed. rev. 6 Sept. 2007). In other words, if the prior art teaches away from a proposed modification, then the prior art does not render a claim *prima facie* obvious. Moreover, the M.P.E.P. advises that all of the subject matter recited in a claim must be considered when evaluating whether a claim is *prima facie* obvious. § 2143.03. Thus, the claimed invention as a whole must be evaluated, and if the prior art as a whole fails to render all of the recited subject matter obvious, the prior art does not render a claim *prima facie* obvious. See id.

Since Yuzuhara emphasizes having a different direction of opening for ports 116 of adjacent brush teeth 102b and 102c, Yuzuhara teaches away from an applicator nozzle in which respective apertures of adjacent intermediate teeth face in the “same

direction,” as recited in claims 39 and 62. Regardless of whether Yuzuhara and Simpson were to be considered individually or in combination, one of ordinary skill in the art would not have had any legitimate reason to alter the express principles of operation of the subject matter disclosed in Yuzuhara. Therefore, the cited references do not provide any basis for a *prima facie* case of obviousness. Consequently, the Section 103(a) rejection of claims 39 and 62 and the claims depending therefrom should be withdrawn.

Applicants also respectfully submit that the rejection of claims 39 and 62 should be withdrawn for reasons similar to those discussed above in connection with claim 1. For example, similar to claim 1 (although of different scope), each of claims 39 and 62 recites a “channel opening laterally on an exterior of [an] intermediate tooth via at least one outlet aperture” that faces in a “direction of at least one adjacent tooth.” Accordingly, claims 39 and 62 also should be allowable for reasons similar to those discussed above in connection with claim 1.

For at least these reasons, independent claims 1, 39, and 62 and each of the claims depending therefrom should be allowable.

Applicants respectfully request reconsideration of this application, withdrawal of the outstanding rejection, and allowance of all pending claims.

The Office Action contains a number of statements and characterizations regarding the claims and the related art. Applicants decline to subscribe automatically to any statement or characterization in the Office Action, regardless of whether it is addressed above.

Should the Examiner wish to discuss this case, she is invited to call the undersigned at 571-203-2774.


Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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By: _____


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